

**FILED**  
 2010 OCT 19 P 3:52  
 RICHARD H. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

SHELLEY ALBINI, an individual, on behalf of Civil Action No.:  
 herself and all others similarly situated;

Plaintiff,

vs.

ZYNGA GAME NETWORK, INC., a  
 Delaware corporation; FACEBOOK, INC., a  
 Delaware corporation; and DOES 1-50,  
 inclusive;

Defendants.

**CLASS ACTION**

**COMPLAINT FOR:**

1. VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT
2. VIOLATION OF THE STORED COMMUNICATIONS ACT
3. VIOLATION OF CAL. BUS. & PROF. CODE §17200
4. VIOLATION OF CALIFORNIA'S COMPUTER CRIME LAW
5. BREACH OF CONTRACT
6. VIOLAION OF CAL CIV. CODE §§1572 & 1573
7. UNJUST ENRICHMENT

**DEMAND FOR JURY TRIAL**

1 Plaintiff Shelley Albini (hereinafter "Plaintiff"), individually and on behalf of all others  
2 similarly situated, hereby alleges as follows:

3 **I. INTRODUCTION.**

4 1. Plaintiff brings this Class Action on behalf of herself and all other similarly  
5 situated individuals whose privacy was violated by the actions of Defendants Zynga Game  
6 Network, Inc. (hereinafter "Zynga") and Facebook, Inc. (hereinafter "Facebook"). Plaintiff  
7 reserves the right to name additional class representatives.

8 **II. JURISDICTION AND VENUE.**

9 2. This Court has personal jurisdiction over all Defendants because (a) a  
10 substantial portion of the wrongdoing alleged in this complaint took place in this state, (b)  
11 Zynga and Facebook are authorized to do business within the state, have sufficient minimum  
12 contacts with this state, maintain their headquarter offices in this state, and/or otherwise  
13 intentionally avail themselves of the markets in this state through the promotion, marketing  
14 and sale of products and services in this state, to render the exercise of jurisdiction by this  
15 Court permissible under traditional notions of fair play and substantial justice.

16 3. This Court has subject matter jurisdiction pursuant to the Class Action Fairness  
17 Act of 2005, 28 U.S.C. § 1332(a) and (d) because the amount in controversy exceeds  
18 \$5,000,000.00 exclusive of interest and costs, and named Plaintiff and more than two-thirds of  
19 the members of the putative class are citizens of states different than that of Zynga and  
20 Facebook. This Court also has federal question jurisdiction as this Complaint alleges  
21 violations of the Electronic Communications Privacy Act (18 U.S.C. § 2510 *et seq.*) and the  
22 Stored Communications Act (18 U.S.C. § 2701 *et seq.*).

23 4. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c) because  
24 a substantial portion of the events and conduct giving rise to the violations of law complained  
25 of herein occurred in this District. Facebook's principal executive offices and headquarters are  
26 located in Palo Alto, California and Zynga's principal executive offices and headquarters are  
27 located in San Francisco, California.  
28

1 **III. PARTIES.**

2 5. Plaintiff Shelley Albin is a resident of New Haven County, Connecticut. She is  
3 a registered user of Facebook's services. During the relevant period, Plaintiff used a gaming  
4 application, or "app", created by Zynga called "Farmville" on Facebook.com.

5 6. Defendant Zynga Game Network, Inc. is a Delaware corporation that maintains  
6 its headquarters in San Francisco, California. Zynga conducts business throughout California  
7 and the United States.

8 7. Defendant Facebook, Inc. is a Delaware corporation that maintains its  
9 headquarters in Santa Clara County, California. Facebook conducts business throughout  
10 California and the United States.

11 **IV. FACTS COMMON TO ALL CAUSES OF ACTION.**

12 8. Facebook is the world's largest social networking website, with over 500  
13 million registered users worldwide.

14 9. Facebook allows users to subscribe to and use applications, or "apps," which are  
15 pieces of software that let users play games or share common interests with one another.

16 10. Zynga created and maintains numerous "apps", including "Farmville," one of  
17 Facebook's top-ranked "apps" with over 59 million users.

18 11. According to Facebook, its "mission is to give people the power to share and  
19 make the world more open and connected." ([www.facebook.com/facebook?v=info%ref=pf](http://www.facebook.com/facebook?v=info%ref=pf)).

20 To accomplish that mission, Facebook allows anyone with access to a computer and an internet  
21 connection to register for its services free of charge, but requires that registrants provide their  
22 *actual* names rather than a "user name" that is more common among other comparable social-  
23 networking websites.

24 12. Once registered, Facebook users may post a plethora of information to their  
25 "Facebook profiles" including, but not limited to, their birth dates, places of birth, current and  
26 past addresses, present and past employment, relationship statuses, personal pictures and  
27 personal videos.

1           13. Each Facebook user has a user ID number which uniquely identifies that user.  
2 A Facebook's user ID is a public part of all Facebook profiles, and anyone can use an ID  
3 number to find a person's name using a standard web browser. A Facebook's user ID is  
4 available even if that user has set all of his or her information to be private. For users who  
5 have set their information to be accessible to "everyone," their Facebook ID reveals all  
6 information cited to above in Paragraph 12.

7           14. Contrary to the Statement of Rights and Responsibilities and Privacy Policies of  
8 Defendants' user agreements with their subscribers and contrary to state and federal law, many  
9 of Facebook's most popular "apps", including "Farmville", send Facebook ID numbers to  
10 numerous advertising and data firms, which then build profiles of Internet users by tracking  
11 their online activities.

12           15. Many of Facebook's most popular apps, including Zynga's "Farmville",  
13 transmit identifying information from users' pages and users' friends' pages, in effect,  
14 providing access to people's names to advertising and internet tracking companies. This  
15 affects millions of Facebook "app" users, including those who set their profiles to be  
16 completely private and those who are linked to users of "apps" including "Farmville."

17           16. As a direct and proximate result of Defendants' unlawful actions, Plaintiff and  
18 members of the Class have suffered and continue to suffer damages in amounts as yet to be  
19 ascertained, but subject to proof at trial in amounts in excess of the minimum jurisdiction of  
20 this Court.

21 **V. CLASS ACTION ALLEGATIONS.**

22           17. Plaintiff bring this action on behalf of herself and the following class: all  
23 Facebook users in the United States who, at any time after October 18, 2006 utilized a  
24 Facebook application, including but not limited to Farmville, manufactured by Zynga (the  
25 "Class"). Excluded from the Class are Defendants, their officers and directors, legal  
26 representatives, successors or assigns, any entity in which either Defendant has a controlling  
27 interested, the judge to whom this case is assigned and the judge's immediate family.  
28

1 18. Every member of the proposed Class is a party to Defendants' Terms and  
2 Conditions and Privacy Policy as alleged herein.

3 19. Plaintiff Shelley Albini is a member of the Class she seeks to represent.

4 20. Numerosity. The potential members of the Class are so numerous that joinder  
5 of all members would be impractical. Since 2006, Facebook has grown from millions of users  
6 to over 500 million users. Upon information and belief, there are millions of Facebook users  
7 who utilize applications such as Farmville and thus millions of persons in the Class. The  
8 number of Class Members is known to Defendants.

9 21. Commonality. This case poses questions of law and fact common to the Class  
10 as a whole that predominate over any questions affecting individual members of the Class.  
11 Those common questions include, but are not limited to, the following:

- 12 (a) how and what personally-identifiable user data information was  
13 transmitted to third parties through applications such as Farmville;
- 14 (b) whether Defendants violated their Statement of Rights and  
15 Responsibilities and Privacy Policies with their subscribers and other  
16 representations to users by allowing manufacturers of applications  
17 available through Facebook to make users' personal information  
18 available to third parties;
- 19 (c) whether Class members are entitled to damages as a result of  
20 Defendants' conduct, and, if so, what is the measure of those damages;
- 21 (d) whether Defendants' conduct as described herein violated the Electronic  
22 Communications Privacy Act, 18 U.S.C. § 2510 *et seq.*, (the "ECPA");
- 23 (e) whether Defendants' conduct described herein violated the Stored  
24 Communications Act, 18 U.S.C. § 2701 *et seq.*, (the "SCA");
- 25 (f) whether Defendants' conduct described herein violated California's  
26 Unfair Competition Law (Cal. Bus. Prof. Code § 17200, *et seq.*);
- 27 (g) whether Defendants' conduct described herein violated California's  
28 Computer Crime Law (Cal. Penal Code § 502);



- 1 (h) whether Defendants' conduct described herein violated the California  
 2 Consumer Legal Remedies Act (Cal. Civ. Code § 1750, *et seq.*);  
 3 (i) whether Defendants' conduct described herein constitutes breach of  
 4 contract;  
 5 (j) whether Defendants were unjustly enriched as a result of their conduct  
 6 described herein; and  
 7 (k) what relief is necessary and appropriate to remedy Defendants' unlawful  
 8 conduct.

9 22. Typicality. The claims of Plaintiff are typical of the claims of the Class as a  
 10 whole as all have been similarly affected by Defendants' uniform and actionable conduct as  
 11 alleged herein.

12 23. Adequacy of Class Representation. Plaintiff will fairly and adequately represent  
 13 and protect the interests of the members of the Class.

14 24. Adequacy of Class Counsel. Plaintiff's counsel is competent and experienced in  
 15 litigating class actions. Plaintiff has no interests antagonistic to, or in conflict with, the Class  
 16 that Plaintiff seeks to represent.

17 25. Propriety of Class Certification. Class certification is appropriate under Federal  
 18 Rule of Civil Procedure 23(b)(3). A class action is superior to other available methods for the  
 19 fair and efficient adjudication of this litigation. The injury suffered by each individual Class  
 20 Member is relatively small, given the burden and expense of individual prosecution of the  
 21 complex and extensive litigation necessitated by Defendants' conduct. Even if the individual  
 22 members of the Class could afford such individual litigation, the court system could not.  
 23 Moreover, Defendants have implemented a common scheme through the use of uniform  
 24 practices that apply generally to the Class. Questions of law and fact common to the Class,  
 25 therefore, predominate over any questions affecting only individual members of the Class.

26 ///

27 ///

28 ///

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT**

3 26. The allegations set forth in paragraphs 1 through 25 are incorporated herein by  
4 reference.

5 27. Plaintiff brings this claim for relief on behalf of herself and the members of the  
6 Class.

7 28. The Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the  
8 “ECPA”) broadly defines an “electronic communication” as “any transfer” of signs, signals,  
9 writing images, sounds, data or intelligence of any nature transmitted in whole or in part by a  
10 wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or  
11 foreign commerce...” 18 U.S.C. § 2510(12).

12 29. Pursuant to the ECPA, Zynga and Facebook operate “electronic  
13 communications services” as defined in 18 U.S.C. § 2510(15). Zynga and Facebook provide  
14 their users with the ability to send or receive electronic communications to or from any of  
15 Facebook’s and Zynga’s millions of users and to or from third parties who are not Facebook  
16 users, such as advertisers and data collectors.

17 30. The ECPA prevents an electronic communications service provider from  
18 intentionally divulging the contents of any communication while in transmission on that  
19 service to any person or entity other than an addressee or intended recipient of such  
20 communication. 18 U.S.C. § 2511(3)(a).

21 31. Plaintiff and Class Members are “person[s] whose...electronic  
22 communication[s] [are] disclosed...or intentionally used in violation of this chapter” within the  
23 meaning of 18 U.S.C. § 2520(a).

24 32. By using Facebook applications such as Farmville, Facebook users are asking  
25 Zynga and Facebook to send an electronic communication. However, pursuant to Facebook’s  
26 Statement of Rights and Responsibilities and Privacy Policies, users do not expect and do not  
27 consent to disclosure of data to outside advertising and data companies.

WHEREFORE, Plaintiff prays for judgment against Defendants, as set forth herein below.

## VIOLATIONS OF THE STORED COMMUNICATIONS ACT

35. Plaintiff brings this claim for relief on behalf of herself and the members of the Class.

37. The SCA also incorporates the ECPA's broad definition of "electronic communication" and "electronic storage." 18 U.S.C. § 2711(1). Pursuant to the ECPA and SCA, "electronic storage" means any "temporary storage of a wire or electronic communication incidental to the electronic transmission thereof." 18 U.S.C. § 2510 (17)(A). This type of electronic storage includes communications in intermediate electronic storage that have not yet been delivered to their intended recipient.

38. The SCA prohibits any electronic communications service provider from divulging to any person or entity the contents of a communication while in electronic storage by that service. 18 U.S.C. § 2702(a)(1).



1           39.     When a Facebook user uses an application such as Farmville, the user is asking  
2 Zynga and Facebook to send an electronic communication allowing the user to participate in  
3 the game. When using an application such as Farmville, Zynga and Facebook, via an  
4 electronic communication, tell outside advertisers and data collectors who the user is and who  
5 the user's Facebook friends are. By divulging to advertisers and data collectors the user's  
6 identity, Zynga and Facebook violated 18 U.S.C. § 2702(a)(1).

7           40.     As a result of Zynga and Facebook's disclosure of user identities, Facebook  
8 gives unauthorized access to and thereby divulges electronically-stored information to  
9 advertisers and data collectors about the particular user who used "apps" created by Zynga  
10 including "Farmville." With the user ID that Zynga and Facebook provide, advertisers and  
11 data collectors can navigate user profiles and see a user's stored electronic communications.

12           41.     Zynga and Facebook intentionally and knowingly divulged confidential and  
13 private information relating to Plaintiff and Class Members' stored electronic communications  
14 without the consent, knowledge or authorization of Plaintiff and members of the Class.

15           42.     Plaintiff and the Class Members are "person[s] aggrieved by [a] violation of [the  
16 SCA] in which the conduct constituting the violation is engaged in with a knowing or intention  
17 state or mind..." within the meaning of 18 U.S.C. § 2707(a).

18           43.     Each incident in which Zynga and Facebook provided personally identifiable  
19 information of a Facebook user, thereby divulging the user's stored communications to a third  
20 party, is a separate and distinct violation of the SCA, subject to the remedies provided under  
21 the SCA, and specifically pursuant to 18 U.S.C. § 2707(a).

22           44.     Plaintiff and the Class Members therefore seek remedy as provided for by 18  
23 U.S.C. § 2707(b) and (c), including such preliminary and other equitable and declaratory relief  
24 as may be appropriate, damages consistent with subsection (c) of that section to be proven at  
25 trial, punitive damages to be proven at trial, and attorneys' fees and other litigation costs  
26 reasonably incurred. Plaintiff and the Class Members are entitled to statutory damages of no  
27 less than \$1,000 per violation, actual and punitive damages, reasonable attorneys' fees and  
28 Zynga and Facebook's profits obtained from the violations described herein.

1 WHEREFORE, Plaintiff prays for judgment against Defendants, as set forth herein  
2 below.

3 **THIRD CAUSE OF ACTION**

4 **UNLAWFUL, DECEPTIVE AND/OR UNFAIR BUSINESS PRACTICES**

5 45. The allegations set forth in paragraphs 1 through 44 are incorporated herein by  
6 reference.

7 46. Plaintiff brings this claim for relief on behalf of herself and the members of the  
8 Class.

9 47. California Business & Professions Code §17200 provides that “unfair  
10 competition shall mean and include any unlawful, unfair or fraudulent business act or  
11 practice.” This statute protects both consumers and competitors by promoting fair competition  
12 in commercial markets for goods and services. California Business & Professions Code  
13 §17500 makes it unlawful for corporations to make “untrue or misleading [statements], and  
14 which [are] known, or which by the exercise of reasonable care should be known, to be untrue  
15 or misleading...” This statute makes false representations concerning maintaining privacy  
16 illegal.

17 48. Defendants are “persons” as defined under Business & Professions Code section  
18 17201.

19 49. Defendants have violated the “unlawful” prong of the UCL in that Zynga and  
20 Facebook’s conduct violated the ECPA (18 U.S.C. § 2510 *et seq.*), the SCA (18 U.S.C. § 2701  
21 *et seq.*), Consumer Legal Remedies Act (Cal. Civ. Code § 1759 *et seq.*) and the California  
22 Computer Crime Law (Cal. Penal Code § 502).

23 50. Facebook violated the “fraudulent” prong of the UCL and California Business &  
24 Professions Code §17200 by explicitly representing in its Statement of Rights and  
25 Responsibilities, Privacy Policy and public statements that it would not make users’ personal  
26 information available to any third party without authorization. Facebook used those  
27 misrepresentations to induce users to submit their personally identifiable information to its  
28

1 website. Zynga and Facebook then knowingly transmitted that information to third parties  
2 without its users' authorization.

3 51. Zynga and Facebook violated the "unfair" prong of the UCL by gaining control  
4 over and divulging to third parties its users' identifiable information without consent and under  
5 false pretenses.

6 52. Plaintiff and the Class Members have suffered injury in fact and have lost  
7 money or property as a result of Defendants' unfair competition as alleged herein. Zynga and  
8 Facebook's unfair, deceptive and fraudulent practices occurred primarily and substantially in  
9 California as decisions regarding the retention and safeguarding the disclosure of user  
10 information were made in California.

11 53. By and through unlawful and fraudulent business practices described herein,  
12 Defendants have obtained valuable property, money and services from Plaintiff and the Class,  
13 Members and have deprived Plaintiff and the Class Members of valuable rights and benefits  
14 guaranteed by the law, all to their detriment.

15 54. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order of this  
16 Court permanently enjoining Zynga and Facebook from continuing to engage in the unfair,  
17 unlawful and fraudulent conduct described herein. Plaintiff seeks an order requiring Zynga  
18 and Facebook to (1) immediately cease the unlawful practices stated in this Complaint; and (2)  
19 awarding Plaintiff and the Class reasonable costs and attorneys' fees pursuant to Cal. Code  
20 Civ. Proc. § 1021.5.

21 WHEREFORE, Plaintiff prays for judgment against Defendants, as set forth herein  
22 below.

#### 23 **FOURTH CAUSE OF ACTION**

#### 24 **BREACH OF CONTRACT**

25 55. The allegations set forth in paragraphs 1 through 54 are incorporated herein by  
26 reference.

27 56. Plaintiff brings this claim for relief on behalf of herself and the members of the  
28 Class.

1           57. In order to register for and use its social-networking website, Facebook required  
 2 that Plaintiff and the Class Members affirmatively assent to its Statement of Rights and  
 3 Responsibilities and Privacy Policy ("Facebook Agreement"). In order to use and display  
 4 "Farmville" and other software, Zynga required that Plaintiff and the Class Members  
 5 affirmatively assent to its Terms of Service ("Zynga Agreement"). The Zynga Agreement  
 6 states, "Zynga respects the privacy of visitors to our game. Information collected from you is  
 7 subject to the pertinent social network's policy."

8           58. The provisions of the Facebook Agreement and Zynga Agreement constitute a  
 9 valid and enforceable contracts between Plaintiff and the Class Members on one hand, and  
 10 Defendants on the other.

11           59. Under the Facebook Agreement and Zynga Agreement, Plaintiff and the Class  
 12 Members transmitted sensitive personally identifiable information to Defendants in exchange  
 13 for Defendants' promise that it would not share that personal information with third parties  
 14 without their authorization.

15           60. Defendants' users pay for Defendants' services with their personal information.  
 16 Defendants' users exchange something valuable- access to their personal information – for  
 17 Defendants' services and Defendants' promise to safeguard that personal information. In  
 18 particular, Facebook promise that any personal information submitted by its users will only be  
 19 disclosed in the specific ways and circumstances set out in Facebook's Statement of Rights and  
 20 Responsibilities and Privacy Policy and with user consent. As set forth in paragraph 64, the  
 21 Zenga Agreement confirms that information collected by the use of "Farmville" and other  
 22 Facebook "apps" is subject to Facebook's policies.

23           61. Defendants collect revenues in large part because the personal information  
 24 submitted by their users increase the value of their advertising services. Because Defendants  
 25 have access to highly personal information about their users, Defendants' platform is  
 26 particularly attractive to advertisers and marketers who can and do use that personal  
 27 information to deliver highly-targeted ads to Defendants' users. In this regard, Defendants'  
 28

1 services are vehicles to acquire personal information about consumers in order to sell that  
2 personal information.

3 62. If not for the inherent and identifiable value of access to personal consumer  
4 information, Defendants would be much less profitable. Thus, their promises concerning the  
5 safeguarding of the personal information Defendants receive from their users in exchange for  
6 their services are vital to their business and their users.

7 63. Defendants' practices- providing services to consumers and profiting from the  
8 sale of personal information to advertisers- have helped Defendants achieve valuation  
9 exceeding \$30 billion.

10 64. Defendants materially breached the terms of the Agreements through the  
11 unlawful conduct alleged herein, including their disclosure of Plaintiff's and the Class  
12 Members' personal information to third parties.

13 65. As a result of Defendants' misconduct and breach of the Agreements as  
14 described herein, Plaintiff and the Class have suffered injury.

15 WHEREFORE, Plaintiff prays for judgment against Defendants, as set forth herein  
16 below.

#### 17 FIFTH CAUSE OF ACTION

#### 18 VIOLATION OF CAL. CIV. CODE §§ 1572 & 1573

19 66. The allegations set forth in paragraphs 1 through 65 are incorporated herein by  
20 reference.

21 67. Plaintiff brings this claim for relief on behalf of herself and the members of the  
22 Class.

23 68. Cal. Civ. Code §§ 1572 provides in relevant part that actual fraud exists when a  
24 party to a contract suppresses "that which is true, by one having knowledge or belief of the  
25 fact" "with intent to deceive another party thereto, or to induce him to enter into the contract."

26 69. Cal. Civ. Code § 1573 provides in relevant part that constructive fraud exists  
27 "[i]n any such act or omission as the law specifically declares to be fraudulent, without respect  
28 to actual fraud."





WHEREFORE, Plaintiff prays for judgment against Defendants, as set forth herein below.

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for an order granting the following relief:

2. Declaring that Zynga and Facebook's actions, as described herein, violate the ECPA, the SCA, California Unfair Competition Law, the Computer Crime Law, and the Consumer Legal Remedies Act, and constitute breach of contract, fraud and unjust enrichment.

4. Declaring that Zynga and Facebook's actions, as described herein, violate the ECPA, the SCA, California Unfair Competition Law, the Computer Crime Law, and the Consumer Legal Remedies Act, and constitute breach of contract, fraud and unjust enrichment.

6. Awarding damages, including statutory damages where applicable, to Plaintiff and the Class in an amount to be determined at trial under the first, second, third,

fourth, and sixth causes of action only;

7. Awarding all economic, monetary, actual, consequential and compensatory damages caused by Zynga and Facebook's conduct, and if it is proved to be willful, award Plaintiff and the Class exemplary damages under the first, second, third, fourth, and sixth causes of action only;

8. Awarding restitution against Zynga and Facebook for all money to which Plaintiff and the Class are entitled in equity;

9. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

10. Awarding Plaintiff and the Class pre- and post-judgment interests, to the extent available; and

11. Awarding such other and further relief as equity and justice may require.

DATED: October 19, 2010

**KHORRAMI POLLARD & ABIR LLP**

By:

*Launa Adolph*

*Attorneys for Plaintiff*

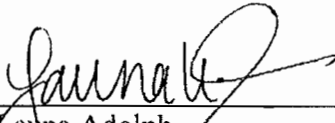
DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby requests that this action be tried before a jury.

DATED: October 19, 2010

KHORRAMI POLLARD & ABIR LLP

By:

  
Launa Adolph  
Attorney for Plaintiff

KRA KHORRAMI POLLARD & ABIR LLP